

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 5, 2009

Charles R. Fulbruge III
Clerk

No. 08-40141

Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

YESENIA LEAL

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:99-CR-372-7

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Yesenia Leal, federal prisoner # 92524-079, appeals the district court's denial of her motion to compel the Government to file a motion for reduction of sentence pursuant to FED. R. CRIM. P. 35(b).

Rule 35(b) does not provide a jurisdictional basis upon which to entertain Leal's motion. *See United States v. Early*, 27 F.3d 140, 141-42 (5th Cir. 1994). The Government's refusal to file a Rule 35 motion is reviewable only if it is based on an unconstitutional motive, which Leal does not allege. *See United States v.*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Sneed, 63 F.3d 381, 389 n. 6 (5th Cir.1995). Leal's motion is thus unauthorized and the district court and this court both lack jurisdiction to consider it. Accordingly, the appeal is DISMISSED for lack of jurisdiction.